

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Inter-Carrier Compensation)
For ISP-Bound Traffic)

CC Docket No. 99-68

RECEIVED
APR 27 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY OF INTERMEDIA COMMUNICATIONS INC.
SUPPORTING THE COMMISSION'S TENTATIVE CONCLUSIONS**

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel and pursuant to the Commission's Notice of Proposed Rulemaking¹ hereby submits its Reply in support of the Commission's tentative conclusions regarding the regulatory processes that should govern the establishment of rates for the transport and termination of dial-up traffic to Internet Service Providers ("ISPs"). As discussed below, Intermedia supports the Commission's tentative conclusion and recommended decision that reciprocal compensation rates for ISP-bound traffic should continue to be set in the future as they have in the past – by treating the traffic as local telecommunications traffic, subject to reciprocal compensation rates established through negotiations between incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs"), or in the absence of a negotiated agreement, by arbitration before the appropriate State regulatory commission. The record in this proceeding reflects broad support for this outcome, and for the application of Federal rules to ensure uniformity and reasonableness in the outcomes of these state proceedings.

¹ *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, FCC 99-38, Notice of Proposed Rulemaking (rel. Feb. 26, 1999) ("NPRM").

I. THE RECORD IN THE INSTANT PROCEEDING SHOWS OVERWHELMING SUPPORT FOR CONTINUING TO RELY ON THE NEGOTIATION/ARBITRATION PROCESS, SUBJECT TO FEDERAL RULES AS NECESSARY TO GUARANTEE NONDISCRIMINATORY AND REASONABLE OUTCOMES

As Intermedia discusses below, the record in this proceeding demonstrates an unusual consensus among industry commentors. With remarkable consistency, competitive carriers strongly support the Commission's tentative conclusion that the *status quo* should be retained – that is, dial-up calls to ISPs should continue to be treated like local calls for ratemaking purposes, subject to the same reciprocal compensation rates established through negotiations or through arbitration before State regulatory commissions – with the addition of some Federal rules to ensure uniform and reasonable rates. In contrast, ILECs – who clearly are disappointed with the recent decisions on this issue coming out of the State regulatory commissions – are the proponents of Federal prescription of specific rates and compensation schemes. This delineation among commenting parties makes it clear that adoption of the Commission's tentative conclusion would promote competition and reflects sound public policy.

A. The Comments of Competitive Carriers Show Overwhelming Support for the Commission's Recommended Decision, Subject to Certain "Backstop" Federal Rules

The record reflected in the comments filed in the instant proceeding show overwhelming support for the Commission's tentative conclusion and recommended decision that compensation for ISP-bound dial-up traffic should be set in the same manner, and set at the same rates, as reciprocal compensation for local traffic – through negotiation, or arbitration before State regulatory commissions. Support for this approach is found among all segments of the competitive telecommunications industry,

including CLECs,² interexchange carriers (“IXCs”)³, ISPs⁴ and cable companies.⁵ There is also significant support for this approach among State regulatory commissions.⁶ This is the broadest possible showing of support for the Commission’s tentative conclusion, and strongly supports its adoption in a final order. As Intermedia discusses in the following section, the record in this proceeding also demonstrates that the Commission has ample authority – and the industry faces a compelling need – to establish Federal guidelines that will ensure uniformly reasonable results from the State-supervised negotiation or arbitration processes.

B. The Alternative Commission Schemes Proposed by Several ILECs Must Be Rejected

Predictably, most ILECs object to the Commission’s reliance on the State arbitration process to establish reciprocal compensation rates for ISP-bound dial-up traffic. This opposition is predictable because the ILECs are dissatisfied with the decisions by State regulatory commissions that to date have unanimously found that, under existing interconnection agreements, ILECs are required to pay reciprocal compensation to CLECs for the ISP-bound dial-up traffic terminated on the CLEC networks. The ILECs’ arguments for Federally-prescribed rates for such traffic is a flagrant attempt at forum-shopping in an attempt to obtain a result more favorable to the ILECs. These arguments are without merit and should be rejected.

² E.g., Comments of: ALTS at 5 and *passim*; Cablevision Lightpath at 6-8 and *passim*; GST at 7-8, 16; KMC at 5; RCN at 3; Time Warner at 1-9.

³ E.g., Comments of: AT&T at 6; CompTel at 10; MCI WorldCom at 9-10; Sprint at 1-3.

⁴ E.g., Comments of: America Online at 1 and *passim*; CIX at 2.

⁵ See Cox at 7-8; MediaOne at 4-5.

⁶ E.g., Comments of New York Public Service Commission at 1-2.

As several commentors have demonstrated, the alternative compensation schemes proposed by some ILECs would lead to discriminatory and otherwise unreasonable results, and would be impracticable to implement. For example, numerous commentors note that ILEC proposals that require carriers to identify, segregate and measure ISP-bound traffic and subject such traffic to separate rates would yield inequitable and unreasonable results. These parties demonstrate that such compensation schemes would fail to provide adequate and nondiscriminatory compensation to CLECs;⁷ would be impracticable;⁸ would impose unacceptable costs on the industry;⁹ and would unduly burden the resources of the Commission.¹⁰

All of these concerns compel rejection of the revenue sharing schemes proposed by Ameritech,¹¹ BellSouth¹² and U S West,¹³ which require the segregation of ISP-bound traffic. In addition, these schemes all share an additional flaw: by Commission policy, ISPs are exempt from paying access charges, and there are simply no access revenues to share. Both Bell Atlantic and GTE concede that, absent access charges, any revenue sharing scheme is inadequate to provide compensation for this traffic.¹⁴ This fact – identified by CLECs¹⁵ and some ILECs alike – compels rejection of these revenue sharing proposals.

⁷ E.g., Comments of: ALTS at 11-13; AT&T at 10-15; Cox at 6-7; CTSI at 5-7; Time Warner at 8-9, 12.

⁸ E.g., Comments of MCI at 14, 17.

⁹ E.g., Comments of: AT&T at 7; Cox at 8; GST at 11, 18; Time Warner at 15.

¹⁰ E.g., Comments of: AT&T at 7-8.

¹¹ Comments of Ameritech at 12-13.

¹² Comments of BellSouth at 9.

¹³ Comments of U S West at 4-5.

¹⁴ Comments of: Bell Atlantic at 6; GTE at 23.

¹⁵ Comments of ALTS at 10-11.

II. THE COMMISSION CORRECTLY FINDS AMPLE STATUTORY AUTHORITY TO SUPPORT THE ROLE OF STATE REGULATORY COMMISSIONS IN SETTING RECIPROCAL COMPENSATION FOR ISP-BOUND DIAL-UP TRAFFIC, SUBJECT TO ULTIMATE COMMISSION OVERSIGHT

As Intermedia discusses below, the record in the instant proceeding demonstrates that the Commission has ample authority under the Communications Act to rely on the State-supervised negotiation and arbitration processes to establish compensation rates for ISP-bound dial-up traffic, and to impose Federal national standards governing such processes.

A. The Commission Is Fully Empowered to Continue to Rely On State Regulators to Set Rates for ISP-Bound Traffic – And State Regulators Are Fully Empowered to Do So

The Communications Act established a new regulatory paradigm that eliminated many of the “bright line” distinctions between Federal and State jurisdiction. The Commission has expressly recognized that, under §252 of the Act, the States’ ratemaking authority extends to both interstate and intrastate services.¹⁶ This interpretation of the Act has recently been confirmed by the Supreme Court, which also confirmed the Commission’s authority under § 208 of the Act supports its oversight of the methods used to establish such rates as part of its charge to implement the provisions of the Act.¹⁷ The Comments in the instant proceeding demonstrate that the Commission has ample authority to require that dial-up traffic to ISPs be treated as local traffic for

¹⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 83 (1996).

¹⁷ *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

ratemaking purposes, subject to the same reciprocal compensation rates that State regulatory commissions establish for local traffic.¹⁸

B. The Commission Is Fully Empowered to Establish Nationally-Applicable Rules to Ensure Nondiscriminatory and Reasonable Reciprocal Compensation Rates

The record in this proceeding establishes a compelling case for the establishment of nationally-applicable rules to act as a regulatory “backstop” to ensure that reciprocal compensation rates established by State regulatory bodies are reasonable and applied in a uniform manner across the country. Numerous parties demonstrate that the Commission has full statutory authority to establish such rules.¹⁹

There is a strong consensus among competitive carriers regarding the types of backstop provisions that the Commission should adopt. First and foremost, the Commission should require that the rates that apply for dial-up calls to ISPs must be identical to the rates that apply for reciprocal compensation for local traffic. A number of commentors make clear that any other result would yield unreasonably discriminatory and highly anticompetitive results.²⁰

In addition, Intermedia supports the commenters that ask the Commission to clarify that the reciprocal compensation rates established by the states must reflect TELRIC costing; and that bill and keep arrangements may be voluntarily adopted by carriers, but may not be mandated.²¹

¹⁸ E.g., Comments of: America Online at 9-10; AT&T at 5-6; CompTel at 10; CTSI at 4 and passim; MCI at 10; Time Warner at 1-2.

¹⁹ E.g., Comments of: AT&T at 5-6; MCI at 9-10; RCN at 3-4, 10.

²⁰ E.g., Comments of: Cablevision Lightpath at 9-12; Cox at 8; GST at 25; MCI at 9-10, 15-17; Time Warner at 8.

²¹ Comments of: ALTS at 8 n.8; 10; RCN at 3-4.

Intermedia also supports CLEC requests that the Commission clarify a CLEC's ability to exercise its "opt in" and "pick and choose" rights under the Act without restriction or delay.²² Finally, as Intermedia and other commentators have argued, the Commission should ensure that its "Rapid Response" and "Rocket Docket" enforcement processes are fully available to CLECs as a means of expeditiously resolving disputes relating to the computation and application of reciprocal compensation charges.²³

III. THE RECORD OF THIS PROCEEDING DEMONSTRATES THE COMPELLING NEED FOR THE COMMISSION TO EXPAND ITS POLICIES TO PROMOTE CLEC PROVISION OF DEDICATED, BROADBAND SERVICES TO END USERS

A number of ILECs have attempted to support their proposals for separate treatment of ISP-bound traffic by arguing that the long hang times and predominantly one-way call patterns of such traffic justifies separate treatment. GTE argues that this practice unjustly enriches CLECs, and that "CLECs and ISPs have little incentive to migrate heavy users off of the dial-up, circuit-switched network onto new services such as xDSL."²⁴ The CLECs' comments in the instant proceeding belie these arguments, demonstrating that ILECs are fully compensated for handling such traffic, and that CLECs are recovering their costs for the transport and termination of ISP-bound traffic.²⁵

More importantly, however, GTE's comments wholly ignore the concerted and protracted attempts of the CLEC industry to obtain interconnection and collocation arrangements that will enable them to roll out the xDSL-based services that GTE argues would relieve the asserted burdens on the ILEC circuit switched networks. CLECs are

²² E.g., Comments of: AT&T at 21-22; CTSI at 17; GST at 21, 23.

²³ Comments of: Intermedia at 5; GST at 20.

²⁴ Comments of GTE at 10-11.

aggressively deploying Digital Subscriber Line technology throughout their networks, and are attempting to roll out these services as quickly as possible. It is, in fact, the intransigence of ILECs such as GTE that has proven the largest impediment to the CLECs' rollout plans. GTE's admission in this proceeding provides the strongest possible evidence that the Commission must, at the earliest possible opportunity, take the following action to facilitate the CLEC rollout of dedicated, broadband data services over DSL and other technologies:

- Mandate that ILECs provide CLECs with DSL-capable loops and access to preordering systems showing the availability of such loops.
- Provide the Enhanced Extended Link (combinations of unbundled loops, transport and end office multiplexing – including DSL multiplexing) that will allow ILECs to provide high bandwidth dedicated circuits to end users without the need to collocate in every ILEC end office.
- Identify Digital Subscriber Line Multiplexer and line cards deployed as subloop components or in ILEC end offices as distinct Unbundled Network Elements.
- Mandate the resale of ILEC DSL-based retail services, pursuant to §§ 251 and 252 of the Communications Act, whether those services are tariffed in State tariffs or in Federal access tariffs.
- Mandate the resale of special access services provided to end users, even if those services are tariffed in Federal access tariffs.

Expeditious implementation of these requirements will eliminate many of the barriers that have to date prevented CLECs from rolling out their DSL-based services to the largest possible market. These requirements will also further promote migration away from dial-up connections to ISPs over the ILECs' circuit-switched network and will promote the rapid deployment of dedicated, broadband packet switched connections. This trend will bring broadband service offerings to the American public, will promote

²⁵ E.g., Comments of: ALTS at 16; AT&T at 8-12.

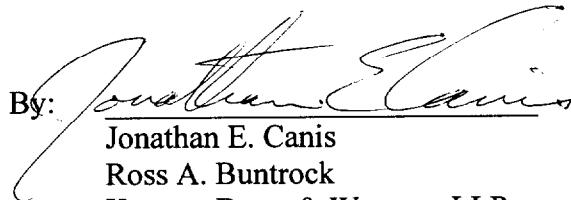
the development of efficient data networks, and will lead to the more efficient use of the circuit switched network.

IV. CONCLUSION

For the reasons set forth above, Intermedia respectfully requests that the Commission adopt final rules governing the establishment of rates for reciprocal compensation for ISP-bound traffic, consistent with the discussion herein.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS INC.

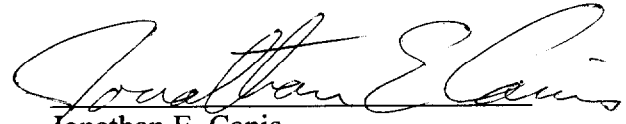
By: 
Jonathan E. Canis
Ross A. Buntrock
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Fifth Floor
Washington, DC 20036
(202) 955-9600

April 27, 1999

Its Attorneys

CERTIFICATE OF SERVICE

I, Jonathan E. Canis, hereby certify that copies of the foregoing Reply Comments of Intermedia Communications Inc. were served on April 27, 1999 by messenger on the following persons.



Jonathan E. Canis

Magalie Roman Salas (4 copies)
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Wanda Harris (diskette only)
CCB Competitive Pricing Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

International Transcription Service
(1 copy plus diskette)
1231 20th Street, N.W.
Washington, D.C. 20036

Thomas Power
Legal Advisor
Office of Chairman Kennard
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Linda Kinney
Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Sarah Whitesell
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Kyle Dixon
Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Kevin Martin
Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Lawrence Strickling
Chief – Common Carrier Bureau
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Carol Matthey
Chief – CCB Policy Division
Federal Communications Commission
445 12th Street
Washington, D.C. 20554

Jane Jackson
Chief – CCB Competitive Pricing
Division
Federal Communications Commission
445 12th Street
Washington, D.C. 20554